

BOARD OF EQUALIZATION RULES FOR TAX APPEALS

California Code of Regulations

Title 18. Public Revenues

Division 2.1. State Board of Equalization – Rules for Tax Appeals

Chapter 2: Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees

ARTICLE 3: CLAIMS FOR REFUND

5239. COMBINED CLAIMS FOR REFUND ON BEHALF OF CLASS OF TAXPAYERS.

(a) This section only applies to combined claims for refund of the Sales and Use Tax, including State-administered local sales, transactions, and use taxes.

(b) Procedures Required of Class Representative. The representative claiming a refund on behalf of members of a class must establish:

(1) It is more beneficial to the class and to the State to proceed as a combined claim for refund rather than individually.

(2) The existence and the composition of the class, including:

(A) A description of the members sufficient to identify the persons making up the class.

(B) The approximate number of persons in the class.

(C) The manner in which and the time when the class members shall be identified and notified of the pendency of the combined claim.

(3) The issues of law and fact that are or are not common to all class members, and the approximate number of class members affected by each issue that is not common to all.

(4) The representative's written authority to act as representative for each class member, which authority must authorize Board Staff to release to the representative any confidential information in the Board's files that may be required in connection with the claim. This statement may include a separate claim for refund by the class member or may state that the class member joins in the combined claim.

(5) The representative is a member of the class and when and how the representative became a member. In addition, any unique legal or factual issues pertaining to the representative's claim and any differences between the representative's status as a class member and that of any other class member shall be described.

(6) The representative can fairly and adequately protect the interests of each member of the class and the representative's interests are not antagonistic to members of the class.

(7) When requested by Board Staff, that each member of the class has been notified of the pendency of the claim and each member has had a reasonable opportunity to join in or be excluded from the combined claim.

(c) Action to be Taken by Board Staff.

(1) If Board Staff finds that the claim is a proper combined claim it will, to the extent possible, act upon the claim in the same manner that it would act on any other claim. If Board Staff finds that the claim is not a proper combined claim, it will act only on claims by individual members and notify the representative that the claim is not valid as to others. In determining the amount of any refund due to any member of the class, the refund is limited to the amount of tax overpayment by that member under the tax law under which the claim was filed.

(2) Before a refund will be made to any member of the class, the amount of the tax overpayment by the member must be established and the representative or member must furnish or make available to Board Staff all contracts, documents, or records (or copies thereof) necessary to verify the overpayment and the amount thereof. If such contracts, documents, or records are not presented to or made available to Board Staff, the representative or member, will be deemed to have failed to exhaust the administrative remedies.

(d) Effect of Action on Combined Claims.

(1) Failure to commence a court action within 90 days after the mailing of the notice of the Board's action on a refund claim as provided in the tax law under which the claim was filed constitutes a waiver of any demand against the state on account of alleged overpayments. This waiver, however, does not apply to persons who have not previously been notified of the claim, or who have notified Board Staff that they desire to be excluded from the combined claim. Nor does the waiver apply to persons involved in a claim to the extent it has been declared invalid as distinguished from persons as to whom a claim has been denied.

(2) A judgment in any court action filed with respect to the denial of any claim is res judicata as to the claimant's tax liability or overpayments for the period involved.

Note: Authority cited: Government Code section 15606(a); Revenue and Taxation Code sections 7051, 7202, 7203, 7261, 7262 and 7270.

Reference: Revenue and Taxation Code sections 6814, 6904 and 6932.

HISTORY: 1. NEW SECTION ADOPTED 9-12-2007; EFFECTIVE 2-6-2008